

# Robber to Testify in Franzese Trial

By Marilyn Berger

Newsday Staff Correspondent

Albany—A convicted bank robber, under indictment in Nassau as a member of a Long Island robbery gang that authorities charge was headed by John (Sonny) Franzese, was expected to be the first government witness today in the bank-robbery trial of Franzese and four co-defendants.

Assistant U.S. Attorney Michael Gillen said yesterday that he would call James Smith, convicted of bank robbery in Queens, to testify today. Gillen said other prosecution witnesses would include Richard Paul Parks, who was convicted with Smith and was also indicted by a Long Island grand jury investigating organized crime, and two other convicted bank robbers, John Joseph Cordero and Charles Zaher.

Franzese and four co-defendants are on trial on an eight-count indictment charging robbery of four banks across the country and conspiracy to rob other banks.

During the opening day yesterday, a jury of seven men and five women was chosen in less than five hours. Among them were several state employees, the daughter of a policeman and a man who has worked for 30 years at a bank. Four alternates, three women and a man, also were chosen. At least 37 persons were questioned before the jury was impaneled. Only one of the chosen jurors, a woman, said she had read anything about the case, a short article carried in an Albany paper last week.

Judge Jacob Mishler moved the case to Albany from U.S. District Court in Brooklyn last week following defense complaints that articles carried in Newsday and the New York Times had prejudiced the rights of the defendants. When the jury selection procedure started yesterday Mishler announced in court: "This case was started in the Eastern District of New York and it was moved here because the parties, and that includes the government, thought we could get a fair trial here. We don't say

the parties did not feel they couldn't get a fair trial in the Eastern District, but they felt sure they could get a fair trial here."

Last week in Brooklyn Mishler had cautioned reporters not to write anything about the defendants' backgrounds, records or associations that might prejudice their right to a fair trial, but yesterday he said nothing to reporters. However, he did move them from their customary place in a press box near the defendants' table to the audience section of the courtroom used by general spectators, and later asked them to sit away from prospective jurors. He said later that he did that simply to comply with usual procedures in the Eastern District.

One of the spectators for a small part of yesterday's morning session was Queens District Attorney Thomas Mackell. Franzese and three of his co-defendants in the current trial are scheduled to be tried for the murder in

Queens of Ernest (Ernie the Hawk) Rupolo, an underworld stoolpigeon, on Feb. 6. Mackell, a former state senator, said he had merely come to Albany to visit old colleagues in the Legislature. He was accompanied by James Mosely, assistant district attorney in charge of homicide. Co-defendants in the homicide case who are also co-defendants in the current trial and the addresses they gave are: John (Johnny Irish) Matera, 32, 253-53 149th Avenue, Rosedale; Joseph M. (Whitey) Florio, 40, 754 Glenmore Avenue, Brooklyn, and William D. Crabbe, 41, 114-26 Rockaway Blvd., South Ozone Park. The fourth defendant in the current trial, accused only in the bank-robbery case, is Nicholas Potere, 40, whose address is given as 173 Elton St., Brooklyn. Franzese, 48, who lives at 47 Shrub Hollow Road, Roslyn Heights, is free in \$230,000 bail. Potere is free in \$65,000 bail and Florio is free in \$60,000 bail.

## Sonny Mentioned in Indictment

Mineola—John (Sonny) Franzese's name was mentioned yesterday in an indictment of four other persons involved in fires that destroyed two Oceanside bars accused of catering almost exclusively to sex deviates.

Franzese, a Long Island Cosa Nostra underboss, was not indicted. But his name was mentioned in the 37-count perjury indictment that named Nathan Warshowsky, who District Attorney Cahn has said was a principal in the two bars destroyed by fire in 1964. Also named were Warshowsky's wife, Lillian, and Anthony DiNicola and Manny Roman, who Cahn has said were employees of the burned bars.

Franzese was mentioned as an acquaintance of Edward

DeCurtis, a top Cosa Nostra figure, who was described by Cahn as the operator of the Magic Touch cocktail lounge in Island Park. Cahn has said that the two destroyed bars were competing for deviate business with the Magic Touch, a club reportedly protected by New York City Cosa Nostra leaders.

One of the counts in the indictment alleged that Warshowsky lied to the jury when he said he did not recall telling the district attorney's office on Oct. 5, 1964, that "he (Warshowsky) was present with . . . DeCurtis at the Tradewinds when . . . DeCurtis stated to two individuals (not identified in the indictment) that . . . DeCurtis knew Sonny Franzese and that . . . Franzese should get in touch with . . . DeCurtis."

# Tentative Accord Reached on Lottery

Newsday Albany Bureau

Albany—Jockeying over details of the operation of a statewide lottery neared the end yesterday when Gov. Rockefeller and legislative leaders tentatively agreed to a compromise for picking winners.

A bill establishing the lottery machinery, expected to be introduced today, will call for winning tickets to be drawn from a fishbowl, a technique favored by Rockefeller and the Republican legislative leaders. They had objected to horse races being used to determine lottery winners because of the possibility of fraud. Under the tentative agreement, however, horse races still would figure in the process. As explained by an aide to Senate Majority Leader Earl W. Brydges, it would work something like this: First, an undetermined number of winning tickets would be drawn from a fishbowl and perhaps be assigned numbers representing post positions for a horserace. The tickets would be distributed equally among the number of post positions in a race. Then, a separate drawing would be held to select a previously run horse race in the state. This race would determine which post positions, in order of finish, would be allotted the greatest shares of the lottery proceeds.

Assembly Speaker Anthony J. Travia (D-Brooklyn) has favored horse races as the basis for the lottery rather than the fishbowl since races would

exempt lottery proceeds from a 10 per cent federal tax.

The bill would also create a four-man agency to operate the lottery, two members to be selected by the Democrats and two by the Republicans, sources said. The governor would appoint the agency chairman. The agency, which would be quasi-independent, would be under the State Department of Taxation and Finance. Rockefeller and the Republican legislative leaders had favored putting the lottery operation directly in the hands of the tax department, while Travia had argued for establishment of an independent agency to run the drawing.

Assembly Minority Leader Perry B. Duryea Jr. (R-Montauk), who said he proposed the agency compromise two weeks ago, said last night that it would have investigatory powers, including the power to subpoena.

After a meeting between the governor and legislative leaders yesterday, Brydges (R-Niagara Falls) said that final touches would be put on the bill today at another meeting between Rockefeller and the leadership. Travia also said he expected quick agreement on the bill.

Rockefeller, prior to the meeting, set tomorrow as a deadline on the bill since its projected \$45,000,000 in revenues is required to balance his

—Continued on Page 46



INDIA'S TOP SWINGER. Surrounded by tribal dancers, Mrs. Indira Gandhi, prime minister of India, sits in a swing at recent Republic Day festivities in New Delhi.

# Powell Offers 32-G Check; It's Refused

New York (AP)—The attorney for a Harlem widow renewed his move to punish Adam Clayton Powell on three counts of criminal contempt today, shortly after he refused to accept a \$32,500 check in partial payment of a defamation judgment.

Attorney Raymond Rubin, representing Esther James, said a check made out to the Harlem congressman by his recording company was unacceptable, that it would have to be made out to either Rubin or Mrs. James. Stephen Blaine, president of Jubilee Records, which recorded Powell's "Keep the Faith, Baby," brought the check to State Supreme Court, and tried unsuccessfully in the hallway outside to persuade Rubin to accept it.

Attorney Seymour Barash, who described himself as Powell's business manager, finally offered to produce another check later today, made out as Rubin directed. The \$32,500 represented the balance still due on Mrs. James'

original \$46,500 judgment, plus some interest. An estimated \$20,000 had already been paid by a citizens group. Penalties and interest have now swollen the original figure to \$174,000, a figure that is being appealed by Powell.

Supreme Court Justice Irving L. Levy gave Henry Williams, Powell's attorney, until tomorrow to reply to the motion to punish the congressman.

Barash told newsmen yesterday the check represented advance royalties from the Democratic congressman's new long-playing record. But Rubin said the contract calls for only \$10,000 in advance royalties. Powell had announced from his Bahamas retreat at Bimini Saturday that he would pay today the \$33,000 from the 22 cents he receives from each copy of the record sold. The record was released in New York Wednesday and Powell was told that 11,000 were sold in the first two days.

Powell gave no reason for deciding on today to make

the payment. But Rubin offered this explanation: "On Tuesday a motion comes up here in the State Supreme Court to punish him (Powell) for criminal contempt on three new counts. This was the motion I made about a month ago."

Barash said he planned to turn over the \$33,000 to Rubin prior to the hearing. He said he then would attempt to determine what needs to be done to remove three civil contempt citations and one criminal contempt citation against Powell for defying court orders to pay the judgment. Some legal observers have expressed belief that the payment of the judgment to Mrs. James would kill at least some of the court orders issued for Powell's arrest in New York.

Powell has stayed out of the state to avoid arrest, and his defiance of the court orders have led to his troubles in Congress.